

RECEIVED
APR 26 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 26, 2000

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ex parte: GTE Corp. and Bell Atlantic Corp., CC Docket No. 98-184

Dear Ms. Roman Salas:

On Tuesday, April 25, CPI Executive Director Debra Berlyn and James L. Casserly, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., met with Dorothy Attwood, Legal Advisor to Chairman Bill Kennard. Ms. Berlyn and Mr. Casserly summarized reply comments CPI filed in the above proceeding. They also reviewed major points contained in a one-page summary of CPI's view of the above proceeding and recent *ex parte* proposals. Casserly and Berlyn also discussed excerpted pages from Genuity's Form S-1, filed on April 7 with the Securities and Exchange Commission. The CPI one-page summary paper and the SEC Form S-1 pages are included with this *ex parte* notice.

Pursuant to Commission rules, this notice is being filed with the Office of the Secretary.

Sincerely,


Debra Berlyn
Executive Director

No. of Copies rec'd 071
List ABCDE

-----BEGIN PRIVACY-ENHANCED MESSAGE-----

Proc-Type: 2001,MIC-CLEAR

Originator-Name: webmaster@www.sec.gov

Originator-Key-Asymmetric:

MFgwCgYEVQgBAQICaf8DSgAwRwJAW2sNKK9AVtBzYZmr6aGjlWyK3XmZv3dTINen

TWSM7vrzLADbmYQaionwg5sDW3P6oaM5D3tdezXMm7z1T+B+twIDAQAB

MIC-Info: RSA-MD5, RSA,

CkpsLv6YfY9VJxX5nerwpkBWTsnZMyOqmyAneRAhXR/+g/j6nJpcxlOe2hsc8aio

PzzKCuBAgp2UA4kof1zUqA==

<SEC-DOCUMENT>0000927016-00-001227.txt : 20000410

<SEC-HEADER>0000927016-00-001227.hdr.sgml : 20000410

ACCESSION NUMBER: 0000927016-00-001227

CONFORMED SUBMISSION TYPE: S-1

PUBLIC DOCUMENT COUNT: 8

FILED AS OF DATE: 20000407

FILER:

COMPANY DATA:

COMPANY CONFORMED NAME:	GENUITY INC
CENTRAL INDEX KEY:	0001110794
STANDARD INDUSTRIAL CLASSIFICATION:	[]
IRS NUMBER:	742864824
STATE OF INCORPORATION:	DE
FISCAL YEAR END:	1231

FILING VALUES:

FORM TYPE:	S-1
SEC ACT:	
SEC FILE NUMBER:	333-34342
FILM NUMBER:	596361

BUSINESS ADDRESS:

STREET 1:	3 VAN DE GRAAFF DRIVE
CITY:	BURLINGTON
STATE:	MA
ZIP:	01803
BUSINESS PHONE:	7812623000

FORMER COMPANY:

FORMER CONFORMED NAME:	GTE INTERNETWORKING INC
DATE OF NAME CHANGE:	20000331

</SEC-HEADER>

<DOCUMENT>

<TYPE>S-1

<SEQUENCE>1

<DESCRIPTION>FORM S-1

<TEXT>

<PAGE>

As filed with the Securities and Exchange Commission on April 7, 2000

Registration No. 333-

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Some of our networking equipment is available only from one or a small number of sources. For instance, we rely on Cisco Systems for our network routers and Nortel Networks for our optical electronic equipment. We typically purchase or lease all of our components under purchase orders placed from time to time. We do not carry significant inventories of components and have no guaranteed supply arrangements with vendors. Our vendors also sell products to our competitors and we cannot assure you that they will not enter into exclusive arrangements with our competitors. In addition, we expect to depend for a time on others to deliver and manage our services for some of our international operations. If we are unable to obtain required products or services on a timely basis and at an acceptable cost, we may have to abandon or delay our expansion plans.

We need to obtain additional capacity for our network from other providers in order to serve our customers and keep our costs down.

We lease telecommunications capacity and obtain rights to use dark fiber from both long distance and local telecommunications carriers in order to extend the range of our network. Our inability to obtain this additional capacity on acceptable terms, or at all, could adversely affect our ability to quickly expand our network, attract new customers and serve our existing customers or could increase our costs of doing so.

We must obtain permits and rights-of-way to develop our network infrastructure. If we do not obtain them in a timely fashion, we may have to delay our expansion plans.

The expansion of our network infrastructure will require that we obtain licenses, permits and other rights, including rights-of-way and encroachment agreements and other permits to install conduit and related network equipment, from private landowners, utilities, railroads, local exchange carriers, state highway authorities, local governments and transit authorities. The process of obtaining these licenses, permits and rights can be time consuming and burdensome. In addition, if we are unable to obtain these licenses and permits on acceptable terms and on a timely basis, our ability to expand and operate our network would be severely limited and our business will not grow as we have planned.

Risks Related to Our Relationship With Verizon

We need the consent of Verizon before taking the actions described below. Verizon is not required to grant its consent and may have interests that are different from ours. If Verizon does not grant its consent, we may not be able to make significant acquisitions or enter into major business combinations, incur indebtedness in excess of specified limits or issue equity securities.

We are contractually obligated to obtain the consent of Verizon before we take any of the following actions:

- . making acquisitions or entering into joint ventures involving cash, stock, stock equivalents or assets in excess of \$100 million individually or \$500 million in the aggregate during any 12-month period;
- . making any dispositions of assets outside the ordinary course of business within the first two years after this offering and, thereafter, making dispositions of assets in excess of \$50 million individually or \$250 million in the aggregate in any 12-month period;
- . incurring, during any 12-month period, indebtedness that exceeds a level of permitted indebtedness for that period to be jointly agreed upon by Genuity and Verizon prior to the completion of this offering;
- . entering into agreements or arrangements that contain provisions that

trigger a default or require a material payment if and when Verizon exercises its conversion right; and

13

<PAGE>

- . declaring extraordinary dividends or making other distributions to the holders of our common stock, including our Class A common stock.

In addition, our certificate of incorporation requires us to obtain the approval of the holders of our Class B common stock before we take any of the following actions:

- . amending our certificate of incorporation or by-laws in a manner that adversely affects the rights of the holders of our Class B common stock;
- . issuing capital stock, securities convertible into our capital stock or share equivalents, other than shares of our Class A common stock reserved at the time of this offering for issuance to employees and directors pursuant to our long-term incentive plans;
- . agreeing to enter into a merger, consolidation or sale of all or substantially all of our assets or any similar transactions;
- . filing or declaring of bankruptcy or any full or partial liquidation;
- . authorizing additional capital stock;
- . materially changing the nature or scope of our business; and
- . taking an action that would make it unlawful for Verizon to exercise its conversion rights.

Verizon could prevent us from taking the actions described above. Verizon's interests and objectives, which may diverge from ours, may influence whether Verizon is willing to grant us any consents we may request. We may not be able to resolve potential conflicts between Verizon and us to our satisfaction, and if we cannot, our business may be harmed. Verizon's ability to prevent us from taking these actions will terminate under the circumstances described in "Related Party Transactions" in the section entitled "Subscription Agreement" and in "Description of Capital Stock" in the section entitled "Common Stock".

Verizon has the right to transfer some or all of its shares of Class B common stock to one or more persons. Verizon also may assign its contractual rights to transferees of the Class B common stock. In that event, these persons would be able to prevent us from taking the actions described above.

If and when Verizon converts its Class B common stock into Class C common stock, Verizon will have the ability to exert significant control over our business.

Upon completion of this offering, Verizon will hold through GTE, its wholly owned subsidiary, all of the outstanding shares of our Class B common stock, which will represent 10% of our outstanding voting capital stock at that time, before giving effect to any outstanding options to purchase shares of our common stock under our long-term incentive plans. If and when Verizon is permitted to own more than a 10% voting interest in our company under applicable federal law, Verizon will be able to convert its shares of Class B common stock into shares of Class C common stock that represent approximately 82%, or 80% if the underwriters fully exercise their over-allotment option, of our outstanding capital stock and possess approximately 96% of the total voting power of our capital stock, before giving effect to any outstanding options to



➤ **Bell Atlantic and GTE cannot lawfully merge so long as GTE provides interLATA services in in-region states for which Bell Atlantic has not received §271 authority.**

— **Legal Basis:** The statutory requirements are clear. With limited exceptions, it is unlawful for a Bell Operating Company to provide interLATA service in an “in-region” state before the Commission has found that the BOC has met the requirements of 47 U.S.C. §271. This provision applies whether the service is provided with facilities owned originally by the BOC or acquired in a merger. The statute does not distinguish between voice and data services: it applies to *interLATA* services.

§271 occupies a specially protected place in the statute. Of all the provisions in the 1996 Act, Congress denied the Commission authority to waive the requirements of only two: §251(c) and §271.

— **Policy Basis:** Section 271 provides BOCs with strong incentives to comply with the market-opening provisions of the 1996 Act. Permitting a BOC to evade the requirements of §271 extinguishes those incentives. The growth of interLATA data traffic, especially compared to voice traffic, means the incentive (and the damage from waiving it) is growing in importance. The Commission should remain consistent with its previous actions that prevented BOCs from evading the requirements of section 271:

- Denial of LATA boundary changes sought by U S WEST in Minnesota and Arizona;
- Disallowance of joint marketing arrangements between Qwest and two RBOCs;
- Denial of petitions for interLATA data relief sought in the section 706 inquiry;
- Scrutiny of the proposed divestiture in the Qwest/U S WEST merger proposal.

➤ **GTE’s restructuring proposal for Genuity violates the letter and the spirit of §271.**

- GTE retains ownership and control of Genuity through numerous mechanisms, making Genuity an “affiliate” under §271;
- Being able effectively to provide interLATA data services through Genuity greatly reduces Verizon’s incentive to comply with market-opening provisions of §251.

➤ **What is needed.**

The merger partners have the same options as any other companies in similar circumstances: 1) obtain §271 approval for all in-region states; 2) cleanly divest the interLATA business (as Qwest is doing); 3) abandon the proposed merger.

If GTE wishes to propose an arrangement with an option to recapture Genuity, the proposal must meet three qualifications: 1) Verizon cannot own more than ten percent or control Genuity (directly or indirectly) prior to obtaining §271 approvals; 2) the price paid at recapture must reflect the then-current market value of Genuity; 3) Verizon’s incentive to comply with §251 should not be substantially diminished during the period before recapture.